

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

Supreme Court, U. S.
FILED
OCT 14 1976
MICHAEL RODAK, JR., CLERK

No. 75-1501

**DONALD WELDON IVEY, GORDON MAJOR
PIRKLE, MARSHALL PYRON, JR., and
CHARLES CLEON ANDERSON,**
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR REHEARING FOR WRIT
OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

OSCAR B. GOODMAN, ESQ.
230 Las Vegas Blvd. South
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

Attorney for Petitioner:
CHARLES CLEON ANDERSON

H. A. STEPHENS, JR., ESQ.
CHARLES R. SMITH, ESQ.
Smith & Smith
2334 National Bank of Georgia Bldg.
34 Peachtree Street
Atlanta, Georgia 30303

Attorneys for Petitioners:
**DONALD WELDON IVEY, GORDON MAJOR
PIRKLE and MARSHALL PYRON, JR.**

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TO: The Honorable Chief Justice of the United States
and the Honorable Associate Justices of the
Supreme Court of the United States:

The Petitioners respectfully pray that this Petition
for Rehearing for a Writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit be
considered.

REASONS FOR FILING PETITION FOR REHEARING

On April 16, 1976, the Petitioners filed a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit containing one question presented to this Honorable Court (the Writ of Certiorari heretofore filed is incorporated by reference *in toto*). The question herein presented was included in the original petition for a writ of certiorari.

On October 4, 1976, this Honorable Court denied the petition for a writ of certiorari.

QUESTION PRESENTED

1. Whether 18 U.S.C. §2518(1)(b)(iv) requires the identification in a wiretap application of all persons who the Government has probable cause to believe will participate in conversations over the telephone line to be intercepted, and whose conversations relate to the illegal activity for which the wiretap application is submitted; and if such identification is required, whether failure by the Government to so identify is grounds for suppression of the seized conversations.

STATUTE INVOLVED

18 U.S.C. §2518. Procedure for interception of wire or oral communications.

(1) Each application for an order authorizing or approving the interception of a wire or oral communication *shall* be made in writing upon oath or affirmation to a judge of competent jurisdiction and *shall* state the

applicant's authority to make such application. Each application *shall include* the following information:

* * *

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including . . . (iv) *the identity of the person, if known, committing the offense and whose communications are to be intercepted;*

* * *

(4) *Each order authorizing or approving the interception of any wire or oral communication shall specify —*

(a) *the identity of the person, if known, whose communications are to be intercepted;*

* * *

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that —

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval. (Emphasis Supplied)

STATEMENT OF THE CASE

The Petitioners herein adopt and incorporate the Statement of the Case as contained in the original Petition for a Writ of Certiorari filed April 16, 1976.

REASON FOR GRANTING THE PETITION FOR REHEARING

I.

THE GOVERNMENT FAILED TO IDENTIFY IN THE WIRETAP APPLICATION PERSONS WHO THE GOVERNMENT HAD PROBABLE CAUSE TO BELIEVE WERE COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS WERE TO BE INTERCEPTED; SUCH FAILURE TO SO IDENTIFY REQUIRES SUPPRESSION OF THE SEIZED CONVERSATIONS.

In its brief to the Fifth Circuit, the Government admitted that there was probable cause to believe that Petitioners IVEY, PYRON and ANDERSON were persons engaged in an unlawful lottery. In *United States v. Kahn*, 415 U.S. 143 at 155 (1974), this Honorable Court held that where such probable cause exists, Title III requires the naming of that person in the application or interception order. The decision rendered by the Court of Appeals for the Fifth Circuit in the case at bar conflicts with the interpretation rendered in three other Courts of Appeal. See, *United States v. Bernstein*, 509 F.2d 996 (4th Cir., 1975) *cert. pending*, No. 74-1486, filed 5/27/75; *United States v. Donovan*, 513 F.2d 337 (6th Cir., 1975) *cert. granted*, No. 75-212; *United States*

v. Moore, 513 F.2d 485 (D.C. Cir., 1975) *petition for rehearing en banc pending*. Because Certiorari was granted or is pending in the above cited cases and since the issue in those cases is the same as in the case at bar, it is respectfully submitted that to deny Certiorari in the current case would work as an injustice since the issues are identical.

Petitioners herein contend that review by this Court is not only necessary to resolve the conflict among the circuits but also because there is a need for equal application of the law to the Petitioners herein.

This is the first time in counsel's experience that certiorari has been denied on a case where issues are identical to those of cases wherein certiorari has been granted. This leads counsel to believe that perhaps some inadvertance took place in the Supreme Court's denial of certiorari.

CONCLUSION

For the foregoing reason, it is respectfully submitted that this Petition for Rehearing be considered and a Writ of Certiorari issue to review the decision in this case.

Respectfully submitted,

OSCAR B. GOODMAN, ESQ.
230 Las Vegas Blvd. South
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

Attorney for Petitioner:

CHARLES CLEON ANDERSON

H. A. STEPHENS, JR., ESQ.
CHARLES R. SMITH, ESQ.

Smith & Smith
2334 National Bank of Georgia Bldg.
34 Peachtree Street
Atlanta, Georgia 30303

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PIRKLE and MARSHALL PYRON, JR.

By 
OSCAR B. GOODMAN

CERTIFICATE OF COUNSEL

OSCAR B. GOODMAN, Attorney for Petitioner CHARLES CLEON ANDERSON and on behalf of the remaining Petitioners, and duly admitted to practice before this Honorable Court, hereby certifies that this petition for rehearing is presented in good faith and is not presented for the purpose of delay.

It is further certified that the petition for rehearing is restricted to the question presented therein, which question presents a substantial ground available to Petitioners, and which presents to this Honorable Court a decision of a Circuit Court of Appeal which is of substantial effect.


OSCAR B. GOODMAN

CERTIFICATE OF SERVICE BY MAILING

The undersigned hereby certifies that three (3) true and correct copies of the above and foregoing Petition for Rehearing for Writ of Certiorari was, on this day of October, 1976, mailed, postage prepaid, to the Honorable Robert Bork, Solicitor General, United States Department of Justice, Washington, D.C. 20530.


C.L.B. PUBLISHERS